

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UBIQUITI NETWORKS, INC.,

Plaintiff,

-vs-

CAMBIUM NETWORKS, INC.,
CAMBIUM NETWORKS, LTD., BLIP
NETWORKS, LLP, WINNCOM
TECHNOLOGIES, INC., SAKID
AHMED, and DMITRY MOISEEV,

Defendants.

Case No. 18 C 5369

Chicago, Illinois
December 9, 2019
9:30 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GARY FEINERMAN

APPEARANCES:

For the Plaintiff: FOX, SWIBEL, LEVIN & CARROLL, LLP
BY: MR. ERIK J. IVES
MR. DAVID E. KOROPP
200 West Madison Street
Suite 3000
Chicago, Illinois 60606
(312) 224-1239

For the Defendants: BAKER BOTTS, LLP
BY: MR. HOPKINS GUY
1001 Page Mill Road
Building 1, Suite 200
Palo Alto, California 94304
(650) 739-5000

Court Reporter:

CHARLES R. ZANDI, CSR, RPR, FCRR
Official Court Reporter
United States District Court
219 South Dearborn Street, Room 2144E
Chicago, Illinois 60604
Telephone: (312) 435-5387
email: Charles_zandi@ilnd.uscourts.gov

1 APPEARANCES: (Continued)

2 For the Defendants: MICHAEL BEST & FRIEDRICH, LLP
3 BY: MR. JAMES P. FIEWEGER
4 444 West Lake Street
Suite 3200
Chicago, Illinois 60606
(312) 222-0800

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (Proceedings heard in open court:)

2 THE CLERK: 18 C 5369, Ubiquiti Networks versus
3 Cambium Networks.

4 MR. IVES: Good morning, your Honor. Erik Ives for
5 plaintiff.

6 MR. KOROPP: Good morning, your Honor. David Koropp
7 for Ubiquiti.

8 MR. GUY: Good morning, your Honor. Hopkins Guy with
9 Cambium.

10 MR. FIEWEGER: And Jim Fieweger for Cambium.

11 THE COURT: Good morning. We're here for a status
12 hearing. Thank you for the status report.

13 So, is there anything further that either side would
14 like to address or emphasize with respect to the matters that
15 divide you?

16 MR. KOROPP: Sure. From my perspective, your Honor,
17 there's two main issues that split us at this point. I think
18 we've worked hard to agree on a lot of things.

19 Bifurcation, our understanding is that bifurcation
20 was taken off the table with your prior ruling.

21 THE COURT: No.

22 MR. KOROPP: Okay.

23 THE COURT: Your understanding is incorrect.

24 MR. KOROPP: Okay. And --

25 THE COURT: Was there a motion to bifurcate?

1 MR. KOROPP: Well, what happened was when they --

2 THE COURT: Was there a motion to bifurcate?

3 MR. KOROPP: No, your Honor. They did not move to
4 bifurcate.

5 THE COURT: There was a motion to do what? To reopen
6 discovery.

7 MR. KOROPP: And part of that motion, the second part
8 of that motion, and it was a whole section, was to reopen it
9 without bifurcation. And so when you granted the motion
10 without any explanation otherwise, that's what we took from
11 it. But we hear what you're saying.

12 THE COURT: Yeah.

13 MR. IVES: And to clarify one other thing, your
14 Honor, the motion to dismiss they filed in the alternative
15 asked for exactly the same schedule that they're proposing
16 here. As part of their motion to dismiss, they filed that
17 exact request.

18 THE COURT: Okay. So, anyway, I wasn't intending to
19 rule one way or the other on bifurcation in that order, so
20 let's just discuss it.

21 MR. KOROPP: Sure. So, your Honor, frankly, for the
22 reasons that we've put in our brief -- and, yes, you're right,
23 they never have moved for bifurcation, which we think is --
24 this is not the proper venue to do that, but obviously we will
25 do --

1 THE COURT: Let's assume that it is.

2 MR. KOROPP: Right. We will do exactly what your
3 Honor asks us to do.

4 We don't think that bifurcation makes sense because
5 number one, it would not dispose of the case. To determine
6 the GPL issue is not case dispositive. There is use of
7 third-party software that we got from non-GPL sources, Atheros
8 is an example of that in our complaint. There's no contention
9 by them, no allegation by them, nothing because -- in part
10 because they have never filed a motion, but they're not
11 claiming that Atheros is GPL in any way.

12 The configuration files and the data files, they've
13 never contended that those are GPL-based. If they violated
14 our user agreement, then they have no right and no authority
15 to use any of that information, your Honor, the Atheros
16 software, the data configuration files; and their obligation
17 under the UL is simple: Stop using it and destroy all
18 software using it and return all software that you've given
19 out. They didn't do any of that. None of that will be
20 resolved if you bifurcate and decide that there are other
21 parts of the firmware that are covered by GPL.

22 In addition, we have false advertising claims, we
23 have tortious interference claims, none of which are fully
24 dependent on the GPL issue. So, in our mind, your Honor, this
25 entire bifurcation request is premised on the notion that

1 they're going to win. If they -- and even if they do win,
2 it doesn't dispose of the case.

3 And I would put to you that right now, there's no
4 basis to believe they're going to win the GPL issue. They
5 gave you their expert report. It was -- you know, to quote
6 Mr. Biden, it was malarkey. That was the best they could do.

7 THE COURT: Okay. I think I said last time no one
8 should even talk about the expert report because it was in
9 the context of a 12(b)(6) motion, and it's outside the
10 pleadings. So, I'll confess, I didn't even look at it
11 because it's completely irrelevant to a 12(b)(6).

12 MR. KOROPP: Right. Well --

13 THE COURT: So, I obviously didn't make any rulings
14 one way or the other on whether the defendants were correct
15 on the merits on the GPL issue. All I was looking at was the
16 first amended complaint to see if the pleading defect
17 identified in the original complaint had been remedied. And
18 the answer to that was yes, but just barely; and Ubiquiti
19 could have done a lot better job and been a lot more clear
20 than it actually did. But you made it over the line, so I
21 think all of that's now open and hasn't been ruled on.

22 MR. KOROPP: Yes, so -- right.

23 THE COURT: Yeah.

24 MR. KOROPP: But for that reason, your Honor -- and
25 my only point was that had you had an opportunity to read that

1 report, I think you would have come to the same conclusion
2 that we're asking you to come to, which is right now, there's
3 no basis to believe that the programs that are at issue are
4 infected by the GPL; and discovery may -- they can take
5 discovery on that, but right now, the complaint going forward,
6 there's no basis to believe that.

7 And like I said, and it's not case dispositive. So,
8 I think it would be highly prejudicial to us at this point to
9 continue to not let us take discovery on the merits of the
10 case, which I haven't been involved in this case the entire
11 time, but it was filed in August of 2018. I'm not saying --
12 it sounds like we had some decent fault in that, but the
13 reality is, a lot of time has gone by. That's just -- putting
14 it aside, it has. Witnesses' memories are fading. We have
15 witnesses who are overseas in the Czechoslovakia or whatever.

16 THE COURT: Czech Republic.

17 MR. KOROPP: Czech Republic, yes. I'm sorry.

18 THE COURT: Or Slovakia.

19 MR. IVES: It might be the Ukraine.

20 MR. KOROPP: I believe it is Ukraine. So, there's
21 difficulties here.

22 And we've proposed a schedule that, frankly, I think
23 is aggressive. All of discovery would be completed and
24 dispositive motions by this year. Their proposal -- you know,
25 by 2020, your Honor. Their proposal takes you into April of

1 2020, and that's the first time, you know, that we're at
2 loggerheads on the motions. It could be another, you know,
3 months before that's resolved. And again, it's all premised
4 on they would win. If they don't, we've lost almost another
5 year; whereas, under our proposal, we're done.

6 And if they want to file their motion for summary
7 judgment on GPL issues, they can do that. It won't end the
8 case. But I don't think it would harm them in any material
9 way, compared to the significant harm that I believe we will
10 suffer if we continue to be completely denied discovery.

11 THE COURT: All right. What are your thoughts?

12 MR. GUY: Thank you, your Honor. First of all, the
13 idea that we're not being prejudiced by this in opening
14 discovery is just false, absolutely false. We have been
15 chasing a ghost, your Honor, for over a year. We finally
16 pinned them down to 18 files, and we would like to resolve
17 this.

18 My client has had to spend over a million dollars
19 chasing down all of this, and now he's talking about
20 international discovery in the Ukraine. I can only imagine
21 what that will cost. So, open discovery will be highly
22 prejudicial.

23 At the same time, although they have passed muster
24 under the pleading requirement that requires this Court to
25 assume every fact they allege is true, what they allege, we

1 believe, and we've asserted and we tried to do everything we
2 could within the four corners of the complaint, anything they
3 allege with what they attached, is they have a GNU license.
4 And we were able to show from the public domain that you could
5 go out and find those files, and I think that their expert
6 responded that maybe two or three of them couldn't be found.

7 So, we have 18 files, and when we had the hearing
8 back in September, I was arguing that the GNU license went
9 further than just the license in 18 files. If they take a
10 file and they put it in and it becomes Chapter 1 of a
11 10-chapter section of code, then that entire 10 chapters is
12 licensed. And that's verbatim out of the GNU license.

13 So, what we want to do is at the first blush, your
14 Honor, is to resolve this issue of what is protectable under
15 the GNU licenses because that issue has not been resolved.

16 The Court said then -- and I was bringing this issue
17 to the Court's attention, and the Court said, "Right. But at
18 least you have a start here. You have 18 things. And then if
19 they seek discovery on 19 through 28, you can say, 'Well,
20 where is that in the complaint?' And then you'll either get
21 an answer you like or you don't like; and if there's a
22 discovery scope issue, bring it to me."

23 So, what I'm trying to do is to go to the next step
24 on the merits, which is, fine, they're saying it's these
25 18 files, and that's what the case is limited to; but they're

1 using this as an open door, I think, to go in and expand into
2 a lot of very, very expensive discovery when we believe the
3 vast majority --

4 THE COURT: Well, how do we know that?

5 MR. GUY: Pardon?

6 THE COURT: How do you know that they're going to go
7 beyond the 18?

8 MR. GUY: Because they sent us 510 document requests.

9 THE COURT: But those are all withdrawn.

10 MR. GUY: Your Honor, they're just waiting --

11 THE COURT: You know, I read the status report, so I
12 know they were all withdrawn. Yes?

13 MR. GUY: Well, your Honor, suppose they send us 100.

14 THE COURT: Then do you have to answer them, or can
15 you say, "No, this is just the 18, and you can only do the 18
16 and the judge said only the 18. Please withdraw those other
17 ones." And if they say, "No," you can bring it to me, and you
18 can say, "See, I told you so."

19 MR. GUY: But what --

20 THE COURT: And then I get mad at them, and that's
21 a good day for you. Or they can just do what they said they
22 were going to do and just limit it to the 18, in which case
23 it's not -- it's not un-burdensome, I wouldn't say that, but
24 it's not as burdensome as you fear.

25 MR. GUY: Well, the point, thought, I want to make

1 sure is clear with the Court, what I'm trying to do is get to
2 the next step. We don't say that the 18 represent
3 patentable -- I mean, protectable rights; and rather than open
4 up discovery all the way to a traditional open discovery with
5 a dispositive motion after close of discovery on everything,
6 on the 18, we'd like to have a dispositive motion early. And
7 so if there are really only three files that are at issue
8 here, we can deal with those.

9 THE COURT: Okay. But let's not -- just because
10 there's a deadline of whenever -- what's the plaintiff's
11 proposal for dispositive motions? It's December 22nd. You
12 don't have to wait until December 22nd. You could file it in
13 April if you want.

14 MR. GUY: Understood, your Honor.

15 THE COURT: And how -- is there going to be discovery
16 in the Ukraine?

17 MR. KOROPP: Your Honor, the only reason -- and I
18 would preface this by saying I've been practicing in this
19 court for 30 years. I've never had an issue with abuse of
20 discovery or anything like that.

21 But the Ukraine issue is that's where the people who
22 wrote their program are. They hired a company in Ukraine. I
23 don't want to go to Ukraine, but regardless, there's a
24 possibility that that may become an issue in their source
25 code; but I can't control who they hired to write it.

1 THE COURT: I understand. So what --

2 MR. KOROPP: And we would certainly do whatever we
3 can to do it by video or whatever we can do to make it work.

4 THE COURT: Is Ukraine like Japan, where you have to
5 jump through a million hoops to even get a deposition, or is
6 it more open like Canada?

7 MR. KOROPP: Well, we had this discussion, I think,
8 prior frankly to me being here, was you had mentioned that
9 they are their agents of Cambium, that you would hold them to
10 a much more lax standard in terms of producing these people
11 and not making it so difficult for us to do that.

12 Because I have not taken any discovery, I honestly
13 don't know what the status is of these people and whether they
14 are simply agents that could be deposed in that way. I don't
15 know the minutiae of Ukraine practice in terms of taking a
16 deposition there. And we'll find that out, and we'll
17 obviously do whatever we can to not make that burdensome.

18 And it's not like -- as I said, your Honor, that's
19 not necessarily number one on our discovery list, either, but
20 it is a possibility that depending on who else was developing
21 that program, they may be at issue.

22 But I think as counsel appears to concede, it's not
23 case-dispositive even -- and again, to the extent it has any
24 value, it's premised on that they would win, which I don't
25 think that's a fair premise right now or a fair basis to

1 prevent us from going ahead with discovery.

2 And as your Honor pointed out, everything else has
3 been withdrawn because we looked at it and we said, "Yeah, a
4 lot of this is not relevant anymore. It's certainly too
5 many." And our case management order doesn't call for 500
6 document requests. Personally, I've never seen that, so
7 that's not what we're going to do.

8 And I think we can -- if you've seen from the rest of
9 the case management order, if you put aside bifurcation, other
10 than one other issue about number of hours for depositions,
11 we've agreed on everything else. So, we're not being
12 difficult in that respect, and we're not being unprofessional,
13 and we're not taking advantage in a way we shouldn't.

14 MR. GUY: Your Honor, if I may be heard. On the
15 Ukraine issue, my understanding is that, yes, we did use a
16 Ukrainian outfit to do that; but then one of the people who
17 was involved in that went over to work for them, and we now
18 understand he's moved on.

19 So, the -- I don't know what the extent of that
20 discovery is going to be, other than the fact it will be
21 expensive.

22 But I would like -- before I go to Ukraine or pay
23 someone to go there, I'd like to know that the case is limited
24 to, I don't know, is it 18 files or is it one or two or none?
25 And so before I do that -- I mean, that will be horrendously

1 expensive. So, I hear the Court that we can proceed with
2 summary judgment promptly, and that, certainly, we will do.

3 But my point here is that rather than open up
4 discovery at this juncture to literally 18 files that we have
5 already shown the Court can take judicial notice of --

6 THE COURT: No, I can't.

7 MR. GUY: -- we show are in the public domain.

8 THE COURT: Wrong. I can't take judicial notice of a
9 contested expert report. Judicial notice under Federal Rule
10 of Evidence 201 are things that are not contestable, and I
11 think your expert report is contestable. You may end up being
12 right, but it's not a judicial notice issue.

13 MR. GUY: It's a total -- you know, to be right and
14 then cost my client another 1- or \$2 million is terrible.

15 THE COURT: I agree, but there are -- you have
16 remedies for that as well, and you've hinted at those remedies
17 in the status report.

18 MR. GUY: I agree, your Honor, and I mean, we have
19 done everything we can to find out is there anything
20 protectable here so that we could address it; and that's where
21 we're at loggerheads. And the big issue is they continue to
22 make a claim based upon more -- they exclude the licensed-in
23 products -- I mean the licensed-in materials, but they don't
24 exclude the full extent of the GNU license, which they do say
25 supersedes their license.

1 So, I understand we can bring a summary judgment
2 motion promptly, and we will do so. We already have the
3 expert report and the declaration, so I think we've done the
4 bulk of the work and we'll proceed apace.

5 If we can, then, your Honor, all I'm asking is that
6 discovery be somehow limited during this period before we get
7 our summary judgment along. I think that's incredibly
8 reasonable in light of the burden that we're under.

9 THE COURT: Okay. I'm going to adopt the plaintiff's
10 proposed schedule and adopt the plaintiff's proposed limits on
11 deposition hours and the like. That doesn't mean that the
12 plaintiff can take 50 hours of deposition of the defendants
13 and 35 hours of deposition of non-parties. That's just the
14 outer limit. And if one side or the other thinks that the
15 other side has propounded written discovery or is seeking
16 depositions that is beyond the scope of discovery that is
17 either allowed under Rule 26(b)(1) or that makes sense in
18 terms of where we are at this point in the case, then talk
19 to each other about it; and if you have a dispute, you can
20 bring it to me.

21 So, for example, probably an easy example, before
22 you -- everybody goes to the Ukraine or hires, you know, a
23 particular New York lawyer to go over there and to take
24 depositions or videos for documentaries in the Ukraine,
25 before that happens, maybe we ought to figure out what --

1 which of the 18 are in the case or not.

2 Now, if the defendants are dragging their feet on
3 bringing a summary judgment motion on the 18, then I'll be
4 more receptive to see things the plaintiff's way on that
5 particular issue. If the defendants haven't moved for
6 summary judgment but it's because the plaintiff is dragging
7 its feet on discovery, then I'll be more inclined to see
8 things on the defendants' issue.

9 That's just an illustration of -- because I don't
10 know how this is going to play out, I don't know how long the
11 targeted discovery that the defendants have in mind will take
12 because I don't know how cooperative each side's going to be,
13 I don't want to map out exactly how things are going to go at
14 this particular point in time.

15 It's going to be -- if there are disputes over scope,
16 if there are disputes over timing, it will be an entirely
17 fact-and-circumstances-dependent inquiry from my perspective;
18 and I'll just have to ask and figure out what has happened and
19 who's doing what and where you are.

20 But there are -- nearly all cases that I have, we're
21 able to figure things out without bifurcation. In other
22 words, discovery's -- proceeds without bifurcation in a manner
23 that is sensitive to the overriding imperatives that are in
24 Rule 26(b)(1).

25 And again, I'm not saying that you're all going to

1 agree on it. You might not. But if you disagree, you can
2 bring it to me.

3 And I just want to make clear, just because I'm
4 saying, I don't know how many hours for non-parties, you know,
5 50 hours rather than 35 hours, it may end up being 35 hours is
6 all that's required, but I don't want to put an artificial
7 limit because it may be that you need 40 or 42 or 45. I don't
8 know. But you just can't take non-party depositions to fill
9 the 50 hours and say, "Well, it's 49 hours, so we're fine."
10 No. It may end up being 20 hours. I don't know. It all
11 depends on who you want to depose and on what subject.

12 So, the outer limit's 50 on the non-parties. In
13 terms of party depositions, it's 35 hours for each party
14 group, although I don't know how you're going to take 35 hours
15 of deposition on an individual defendant. I think you're
16 stuck with seven. So, again, that's another situation where
17 the outer bound is not going to be the actual bound.

18 So, we'll just go with the plaintiff's proposal with
19 all the caveats that I've just mentioned.

20 I am going to refer this case to the magistrate judge
21 for purposes of a settlement conference. And I'm not saying
22 that now is the right time for a settlement conference. We
23 have a bit of an unusual situation where the defendants want
24 a settlement conference and the plaintiff doesn't. 95,
25 99 percent of the time, it's the converse.

1 But I would like for the magistrate judge to start
2 these discussions with you and figure out when would be the
3 right time. And it's not like the magistrate judge, whoever
4 it's going to be -- and we're going to have to get a new
5 magistrate judge because Mason has retired. They're not going
6 to be able to get you in in the next month or so anyway. So,
7 you'll have those discussions with the magistrate judge as to
8 when will be the right time.

9 Anything else that you'd like to discuss?

10 MR. GUY: Your Honor, just in terms of what we've
11 stated here, we have -- we've attempted to engage in informal
12 settlement discussions according to what we said in the --

13 THE COURT: I'm sorry. Let me interrupt you.

14 There's one way in which I'm not adopting the
15 plaintiff's discovery schedule, and that's the February 25th
16 date for issuing initial written discovery requests. That's
17 the deadline, but if the defendants would like to issue their
18 written discovery now, they can. It's just that the initial
19 round should be served no later than February 25th.

20 So, again, if the defendants want to get in early
21 and drill down on these 18 and see whether it's GPL or not,
22 you can get started right now. All right?

23 MR. GUY: Your Honor, can we move the January 3rd,
24 2020, supplement MIDP at least out seven days until the 10th?

25 THE COURT: Yeah. I understand why, and so why don't

1 we move the January 3rd date to the 10th, and then we'll move
2 the January 10th date to the 17th.

3 MR. GUY: Thank you.

4 MR. IVES: And, your Honor, I believe under the
5 rules, one more date would move then. If the disclosures
6 aren't in until the 10th, would the production of ESI that's
7 triggered by those disclosures go back seven days as well?

8 THE COURT: Yes, whatever the rule is.

9 MR. IVES: So that would be February 8th, then.

10 MR. GUY: Thank you. Thank you, counsel.

11 THE COURT: All right. Anything else you'd like to
12 discuss?

13 MR. GUY: Your Honor, we had -- just on the
14 settlement, although we mentioned informal discussions, we
15 have yet to get a settlement demand after more than a year, so
16 we don't even know what their demand is in terms of any
17 monetary amount. So, I don't want to leave the Court with the
18 impression that we are discussing. We have provided the
19 number of units that Elevate has been used at their request,
20 and I just wanted to leave the Court with that.

21 THE COURT: Sure. And I think if you have questions
22 on that and you want to get the ball moving, that will be in
23 the magistrate judge's purview.

24 MR. GUY: One final thing. Given the Court's -- and
25 I want to thank you for this, your enormous investment in the

1 motions to dismiss, discovery issues will remain with you, is
2 that correct?

3 THE COURT: Yes. I keep discovery.

4 MR. GUY: Thank you.

5 THE COURT: Anything further?

6 MR. KOROPP: The only last thing, your Honor, and we
7 just didn't -- hopefully, I think we're going to be able to
8 resolve it. The defendants filed 37 affirmative defenses, the
9 vast majority of which are simply one sentence, things like,
10 "You acted unfairly," or whatever. We've informed them that
11 that's not proper practice here in the Northern District.

12 We're going to try to resolve it informally. We may
13 appear in front of you again to resolve some of that, but
14 hopefully not. And we've taken the step of saying, "Let's
15 just try to do this amicably rather than immediately rushing
16 in with the motions."

17 MR. GUY: Your Honor, the first I heard of it was
18 9:00 a.m. this morning, so we'll address it.

19 THE COURT: Very good.

20 MR. GUY: Thank you, Judge.

21 THE COURT: Thanks.

22 THE CLERK: Do you want to set another date?

23 THE COURT: Let's set a next date, the week of
24 February 17th.

25 THE CLERK: How about February 20th, 9:00 a.m.

1 MR. KOROPP: Thank you, your Honor.

2 MR. GUY: I'm sorry, your Honor. I didn't hear that.

3 That was for the --

4 MR. KOROPP: 20th.

5 THE COURT: February 20th, does that work?

6 MR. GUY: For which date? I'm sorry.

7 THE COURT: For the next status hearing.

8 MR. GUY: Okay.

9 MR. IVES: Yes, your Honor. That works for
10 plaintiff.

11 MR. GUY: Sorry.

12 THE COURT: That's all right.

13 MR. KOROPP: Well, happy holidays if we don't see you
14 before then.

15 THE COURT: You, too.

16 MR. GUY: Yes, that's fine. Thank you, your Honor.

17 THE COURT: Okay. Thank you.

18 MR. IVES: Thank you.

19 (Which were all the proceedings heard.)

20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the record of proceedings in the above-entitled matter.

23

24 */s/Charles R. Zandi*

December 11, 2019

25 Charles R. Zandi
Official Court Reporter

Date